

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 11

BY SENATORS RUCKER, ROBERTS, AND TAKUBO

[Introduced February 10, 2021; referred
to the Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18-5-45a, relating to declaring any work stoppage or strike by public
 3 employees to be unlawful; providing legislative findings; defining when a county board of
 4 education employee is considered to be participating in a concerted work stoppage or
 5 strike; prohibiting use of accrued and equivalent instructional time to cancel days lost due
 6 to a concerted work stoppage or strike; prohibiting a waiver by the state board for a county
 7 board of education's noncompliance with the employment and instructional term
 8 requirements if the noncompliance is the result of a concerted work stoppage or strike;
 9 declaring participation in a concerted work stoppage or strike to be grounds for
 10 termination; requiring, if the employee remains employed, county boards of education to
 11 withhold the prorated salary or hourly pay of each employee participating in the concerted
 12 work stoppage or strike for each day the employee participates; requiring the sums to be
 13 forfeited to the county board of education; prohibiting participation in extracurricular
 14 activities when an originally scheduled instructional day or noninstructional day is
 15 canceled due to a concerted work stoppage or strike; and prohibiting a superintendent
 16 from closing a school in anticipation of, or to facilitate, a concerted work stoppage or strike.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

1 (a) Legislative findings. —

2 (1) The West Virginia Supreme Court of Appeals held, in *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W.Va. 15 (1990), that “[p]ublic employees have no right to
 3 strike in the absence of express legislation or, at the very least, appropriate statutory provisions
 4 for collective bargaining, mediation, and arbitration.”
 5

6 (2) Public employees in West Virginia have no right, statutory or otherwise, to engage in
7 collective bargaining, mediation, or arbitration, and any work stoppage or strike by public
8 employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by
9 employees of a county board of education poses a serious disruption to the thorough and efficient
10 system of free schools, guaranteed to the children of West Virginia by section one, article XII of
11 the Constitution of West Virginia.

12 (3) Section 18-5-45 of this code is designed to define the school term both for employment
13 of school personnel and for instruction of students. The employment term consists of at least 200
14 days and, within the employment term, an instructional term for students must consist of at least
15 180 separate instructional days. Section 18-5-45 of this code also defines the minimum length of
16 an instructional day, requires county boards to develop a policy for additional minutes of
17 instruction to recover time lost due to late arrivals and early dismissals, and also allows schools
18 with an instructional day in excess of certain minimums to apply this equivalent instructional time
19 to cancel time lost due to necessary closures and other purposes designed to improve instruction.
20 Furthermore, §18-5-45 of this code allows a county board, subject to approval of its plan by the
21 State Board, to deliver instruction through alternative methods on up to five days when schools
22 are closed and provides that these days are considered to be instructional days, notwithstanding
23 the closure of schools.

24 (4) The Legislature intended, by providing for equivalent instructional time and the use of
25 alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-
26 45 of this code, to: (1) Provide flexibility for collaborative time and other methods of improving
27 instruction; and (2) lessen the disruption to the planned school calendar if rescheduling and
28 adding instructional days became necessary to make up lost days due to closures pursuant to
29 §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils.
30 The Legislature did not intend with the enactment of these provisions to permit a reduction in the

instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees.

(b) For the purposes of this section, an employee of a county board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the county board of education:

(1) The employee does not report to work as required by his or her contract of employment;

(2) The employee is not on leave, as specifically permitted by any provision of this code:

Provided, That nothing in this section permits an employee to use personal leave in connection with a work stoppage or strike, in violation of §18A-4-10 of this code; and

(3) The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

(c) The provisions of §18-5-45 of this code, permitting accrued and equivalent instructional time to cancel days lost, and the delivery of instruction through alternative methods, do not apply to and may not be used to cancel days lost due to a concerted work stoppage or strike. Notwithstanding any provision of this code to the contrary, the State Board may not grant a waiver to a county board of education for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional term requirements if such noncompliance is the result of a concerted work stoppage or strike.

(d) If an employee remains employed by the county board of education, notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature hereby determines to be a ground for termination, the county board of education shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the county board of education.

- 57 (e) If an originally scheduled instructional day or noninstructional day is canceled due to a
58 concerted work stoppage or strike by the employees assigned to a school, the school for which
59 the day was canceled may not participate in any extracurricular activities during any part of that
60 same day.
- 61 (f) No superintendent may close a school in anticipation of or to facilitate a concerted work
62 stoppage or strike.

NOTE: The purpose of this bill is to declare any work stoppage or strike by public employees to be unlawful; define when a county board of education employee is considered to be participating in a concerted work stoppage or strike; prohibit use of accrued and equivalent instructional time to cancel days lost due to a concerted work stoppage or strike; prohibit a waiver by the State Board for a county board of education's noncompliance with the employment and instructional term requirements if the noncompliance is the result of a concerted work stoppage or strike; declare participation in a concerted work stoppage or strike to be grounds for termination; require, if the employee remains employed, county boards of education to withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day the employee participates; require the sums to be forfeited to the county board of education; prohibit participation in extracurricular activities when an originally scheduled instructional day or noninstructional day is canceled due to a concerted work stoppage or strike; and prohibit a superintendent from closing a school in anticipation of or to facilitate a concerted work stoppage or strike.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.